

Our Ref: SRK 233863

12 September 2012

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

FILE No:
DOC:
MARS/PRISM:

Dear Sir/Madam

N.W.G. Pty Ltd trading as The National Windscreen Group – Exclusive Dealing Notification in relation to automotive glass

We act for N.W.G. Pty Ltd, trading as The National Windscreen Group (NWG).

We enclose the following:

1. Exclusive Dealing Notification Form G, for lodgement on behalf of NWG; and
2. A cheque for \$100.00 as payment for the lodgement fee.

The proposed conduct involves the sub-contracting of automotive glass repair work by NWG to its subcontractors (**Members**) on the condition that those Members acquire glass and other inputs from suppliers nominated by NWG from time to time.

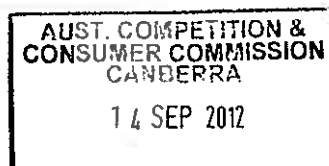
The current supplier with which NWG seeks to negotiate, and appoint as its preferred supplier, is National Auto Glass Supplies Pty Limited (**NAGS**).

Preliminary pricing negotiations between NAGS and NWG suggest a price saving on average of 5% for automotive glass purchased by Members.

We note that, for reasons set out below, there is a strong argument that our client is not strictly required to notify ACCC of the proposed conduct, as the proposed conduct does not amount to third line forcing. These reasons are:

- (a) the proposed conduct might be best characterised as an acquisition of installation services by NWG on the condition that Members acquire automotive glass from NWG's preferred supplier. Such an arrangement does not fall within the prohibition described in sections 47(6) and 46(7) of the *Competition and Consumer Act 2010* (Cth), which apply only to supplies of goods or services subject to a relevant condition; and
- (b) Members are free to terminate their arrangement with NWG at any time without notice and will be released immediately from any obligation to acquire goods from NWG's preferred supplier. The arrangement therefore appears to lack the element of future compulsion that was found in *SWB Family Credit Union Ltd v Parramatta Tourist Services Pty Ltd* [1980] FCA 125 to be a necessary element of third line forcing conduct.

We note however the existence of the decision in *Queensland Aggregates Pty Ltd & Anor v TPC* (1981) ATPR 40-236 (which, to the best of our knowledge, has never been applied since it was decided in the early days of the *Trade Practices Act 1974* (Cth) in 1981). Accordingly, out of an abundance of caution, our client has elected to notify this arrangement to the Commission.



Brisbane
Canberra
Melbourne
Norwest
Sydney

If you have any queries or require further information in relation to this notification, please do not hesitate to contact Stephen Kerr on (03) 8644 3624 or skerr@hwle.com.au.

Yours sincerely
HWL Ebsworth



Stephen Kerr
Partner

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Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of person giving notice:
(Refer to direction 2)

N96151

N.W.G. Pty Ltd, trading as The National Windscreen Group, ACN 114 934 404
(Applicant)

(b) Short description of business carried on by that person:
(Refer to direction 3)

The Applicant is appointed by insurance companies and car fleet companies to carry out automotive glass repair work. The Applicant does so by sub-contracting the work to members of its group of independent, generally owner/operated, automotive glass repair and replacement operators (**Members**).

(c) Address in Australia for service of documents on that person:

The National Windscreen Group
PO Box 1057
Caulfield North
VICTORIA 3161

2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Automotive glass (**Glass**).

(b) Description of the conduct or proposed conduct:
(Refer to direction 4)

The Applicant proposes to sub-contract automotive glass repair work to Members on the condition that those Members acquire Glass and other inputs from suppliers nominated by the Applicant from time to time.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

All Members.

(b) Number of those persons:

(i) At present time:

142.

(ii) Estimated within the next year:
(Refer to direction 6)

Not known.

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable

4. Public benefit claims

(a) Arguments in support of notification:
(Refer to direction 7)

The Proposed Conduct will provide at least the following public benefits:

Members will be able to access the terms for supply of Glass negotiated by the Applicant with its preferred suppliers. This will result in:

- (i) more competitive supply prices for Glass due to the aggregation of volume of Glass being acquired by Members;
- (ii) administrative efficiencies for Members as they no longer each need to separately negotiate supply arrangements;
- (iii) a resulting increase in the ability of the Applicant and Members to compete effectively with and provide a competitive restraint on the dominant supplier in this market, O'Brien Glass Industries Limited (**O'Brien**);
- (iv) resultant increases in competition in the overall market for the supply of Glass, leading to lower prices and better service for consumers; and
- (v) the Proposed Conduct will assist the Applicant to ensure consistently high levels of quality in the products and services supplied to consumers by Members across the Applicant's network.

(b) Facts and evidence relied upon in support of these claims:

See above.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

The Applicant competes in a market for supply of automotive Glass to consumers in Australia (**Glass Market**). Consumers in this market include:

- insurance companies;
- vehicle repairers who subcontract Glass repairs and replacement to specialist suppliers; and
- individual vehicle owners.

The geographic scope of the market is likely to be national.

The largest supplier in the Glass Market is O'Brien, which operates a distribution network consisting of company owned stores and branded owner operators supplying and installing Glass. O'Brien imports and sells to its network all Glass sold through O'Brien retail outlets. A range of Glass installers of various sizes competes with O'Brien. Some of these installers source Glass directly from overseas manufacturers or Australian importers, while others acquire Glass from wholesalers.

The Applicant estimates that O'Brien accounts for approximately 45-50% of supplies of Glass to consumers, while the Applicant's Members account for less than 10%.

Significant manufacturers or importers of Glass in Australia include National Auto Glass Supplies Pty Ltd and Protector Glass Industries Pty Ltd, which the Applicant estimates would currently account for in the order of 30-35% and 20-25% of Glass supplied in the Glass Market respectively.

6. Public detriments

- (a) **Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**
(Refer to direction 9)

The Applicant does not consider there to be any significant detriment to the public as a result of the Proposed Conduct.

The Applicant and the Members are competitively constrained in the Glass Market by both the power of the industry's dominant player, O'Brien, and the high level of countervailing power possessed by the insurance companies the Applicant supplies.

By enabling Members to obtain a more competitive price for one of their largest business inputs (being Glass), Members will be able to reduce costs and therefore compete more effectively with O'Brien, which already effectively aggregates the buying power of its own distribution network. This will serve to provide consumers with a better customer experience (in terms of both prices and service levels) and generate greater competition in the market, as set out above.

The Applicant will continue to review and monitor the price paid by Members for Glass and assess whether Glass can be acquired for a more competitive price from another wholesale market participant. It will continue to look for the best value price it can obtain for the Members in the Glass Market. The Applicant will continue to encourage competition in this market in this manner.

(b) **Facts and evidence relevant to these detriments:**

Please see above.

7. **Further information**

(a) **Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

Name: Stephen Kerr;

Postal address: HWL Ebsworth Lawyers

Level 26, 530 Collins Street, Melbourne, Victoria, 3000;

Contract telephone: 03 8644 3624.

Dated.....*12 September 2012*.....

Signed on behalf of the Applicant

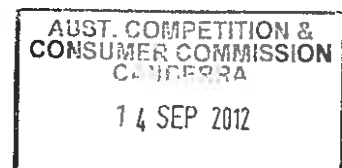
S. R. Kerr

(Signature)

Stephen Kerr
(Full Name)

HWL Ebsworth Lawyers
(Organisation)

Partner
(Position in Organisation)



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.